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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,275	01/19/2001	Toshio Kobayashi	SHC0104	1331

7590 01/25/2005

Michael S Gzybowski  
Butzel Long  
350 South Main Street  
Suite 300  
Ann Arbor, MI 48104

EXAMINER
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BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/766,275	Applicant(s) KOBAYASHI ET AL.	
	Examiner Jennifer A Boyd	Art Unit 1771	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: No changes to the claims were made.

(S) 4/21/05

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 6.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-3, 7

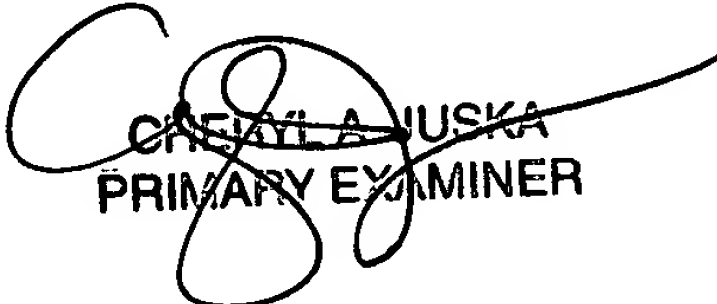
Claim(s) withdrawn from consideration: 4, 5.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*Jennifer Boyd*  
1/19/05

Continuation of 3. Applicant's reply has overcome the following rejection(s): The Applicant has filed a Terminal Disclaimer which overcomes the double-patenting rejections over copending Application 09/613,814, US Patent No. 6,372,067 and US Patent No. 6,531,014.

Continuation of 5. does NOT place the application in condition for allowance because: it does not overcome the outstanding rejection of Strack in view of Morman. It should be noted that Morman positively teaches that the non-elastic materials are nonwovens made of polyolefins and similar polymers including ethylene copolymers, propylene copolymers and butene copolymers (column 4, lines 44 - 64). Morman teaches that non-elastic necked material can also comprise polypropylene (column 7, lines 1 - 10). Morman notes that the non-elastic neckable material can comprise a mixture of two or more fibers (column 7, lines 30 - 35). Because Strack in view of Morman fail to disclose a certain weight percentage for each component, it is held that the percentages are a result of optimization absent any evidence to the contrary. If the claimed ranges have unexpected results, the burden is upon the Applicant to demonstrate that the claimed ranges are not a matter of simple optimization. The Examiner highly suggests to the Applicant to submit a 37 CFR 1.132 Declaration to establish unexpected results. In the Declaration, the Applicant should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. In re Hill, 284 F.2d 955, 128 USPQ 197 (CCPA 1960) and must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness. .

  
CHERYL A. JUSKA  
PRIMARY EXAMINER